

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MCCARVER/DAVIS, Minors.

UNPUBLISHED

June 17, 2014

No. 319052

Wayne Circuit Court

Family Division

LC No. 09-488130-NA

Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Respondent Davis appeals the trial court's order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (j), and (l). Specifically, she claims that the trial court: (1) lacked statutory grounds under MCL 712A.19b to terminate her parental rights; and (2) erred when it determined that her continued custody of the children was not in their best interests under MCL 712A.19b(5). For the reasons stated below, we affirm.

I. ANALYSIS

A. MCL 712A.19B(3)¹

"The petitioner bears the burden of establishing the existence of at least one . . . ground[] [for termination] by clear and convincing evidence." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). The trial court found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(g), (j), and (l), which permit termination under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

¹ A trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000).

provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

1. MCL 712A.19B(3)(G)

Here, the evidence showed that respondent repeatedly neglected her children, and verbally and physically abused them. She was particularly neglectful of her youngest child. She failed to regularly feed him, which required the child to visit the hospital on numerous occasions. She also left him in a car carrier for extended portions of the day. Her neglect caused the child serious developmental problems: he suffered from a flat head and was required to wear a helmet because he spent so much time in his carrier. Further, he had significant gross motor delays and extensive muscle weakness and lack of motor control. He also was unable to bear any weight on his legs or steady his head despite being six months old. Though the older child, a toddler, was fully capable of crawling and walking, respondent often left him restrained in his car seat or on a harness while in the house. This pattern of abuse and neglect is ample evidence that respondent "fail[ed] to provide proper care or custody for the child[ren]" under MCL 712A.19b(3)(g).

Moreover, there is no indication that respondent would be able to provide proper care or custody for the children in the near future—in fact, respondent's behavior continues to raise serious doubts about her fitness as a parent. A court terminated her parental rights to another child in July 2007, after she failed to make progress in resolving issues of home neglect, substance abuse, and domestic violence. After PHM's birth in 2009, the Department provided a plethora of very intensive services to respondent, but she failed to make any progress toward becoming capable of providing proper care and custody for her children. Doctors, mental health professionals, and service providers agreed that respondent was not able to adequately care for herself without assistance, and would not be able to care for her children even with assistance.

Based on this evidence, the trial court properly concluded there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable period of time, and correctly terminated her parental rights under MCL 712A.19b(3)(g).

2. MCL 712A.19B(3)(J)

The trial court also heard extensive evidence that the children would be at risk of harm if returned to respondent's home. Again, respondent failed to properly feed her youngest child, and she left her children restrained in car seats for extended periods of time. She was also unable

to manage her medication regiment, and often became tired or fell asleep when on medication, leaving her children unsupervised. One child suffered burns while respondent was sleeping, and on another occasion respondent fell asleep and left her youngest child unattended in a hospital waiting room. A psychiatrist who treated respondent testified that her drug-seeking behavior and lack of desire to change would adversely affect the mental and physical health of both children. Accordingly, the trial court correctly determined that the children were reasonably likely to be harmed if returned to respondent's home, and properly terminated her parental rights under MCL 712A.19b(3)(j).²

B. BEST INTERESTS DETERMINATION

After the Department presents clear and convincing evidence of a statutory ground for termination, it must prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). To determine a child's best interests, the trial court looks to a number of factors, including the respondent's bond with the child, her parenting ability, and "the child's need for permanency, stability, and finality." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

In this case, the evidence showed that respondent's youngest child entered foster care with significant developmental delays and gross motor deficiencies because of respondent's neglect. He has since made significant improvements while in foster care. Moreover, respondent failed to bond with her children during visits, often spending the majority of her time texting rather than interacting with them. Nor did the children suffer from separation anxiety after the visits. In sum, the children were thriving in their foster care placement, and the evidence clearly demonstrated that respondent was not capable of providing the attention necessary for the children to develop appropriately. The trial court thus correctly found that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

² Because it was not disputed that respondent's parental rights to another child were previously terminated in 2007, the trial court also had grounds to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(l).